

ADOPTED 3/28/08

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall

15C Springfield Road

New Lisbon, New Jersey

February 29, 2008

MINUTES

MEMBERS IN ATTENDANCE: Chairperson Betty Wilson, Vice-Chairman Norman Tomasello, Candace Ashmun, Leslie Ficcaglia, Stephen Lee, John Haas (1st Alternate) and Paul Galletta (3rd Alternate)

MEMBERS ABSENT: Ed Lloyd and Robert W. McIntosh

OTHER COMMISSIONER PRESENT: Dan Kennedy

STAFF PRESENT: John Stokes, Larry Liggett, Susan Grogan, Stacey Roth and Betsy Piner

Chairperson Wilson called the meeting to order at 9:35 a.m.

1. Adoption of minutes from the January 25, 2008 CMP Policy and Implementation Committee meeting.

Commissioner Ficcaglia moved the adoption of the minutes of the January 25, 2008 CMP Policy and Implementation Committee meeting. Commissioner Ashmun seconded and all voted in favor.

Mr. Stokes announced that Commissioner Lee was scheduled to arrive imminently and read the Open Public Meetings Act statement in anticipation of his arrival and the subsequent creation of a quorum of the Commission. As 3rd Alternate to the Committee, Commissioner Galletta would be voting today.

2. Executive Director's Reports

Ms. Grogan said that the four municipalities whose stormwater ordinances and plans were before the Committee had all responded fully to the CMP amendments and staff were recommending full certification for all of them.

Stormwater Plans and Ordinances

Borough of Folsom's August 2007 Stormwater Management Plan and Ordinance 13-2007

Commissioner Galletta moved the recommendation to the Commission of certification of Folsom Borough's August 2007 Stormwater Management Plan and Ordinance 13-2007. Commissioner Tomasello seconded and all voted in favor.

Dennis Township's January 2008 Stormwater Management Plan and Ordinance 2008-01

Commissioner Ficcaglia moved the recommendation to the Commission of certification of Dennis Township's January 2008 Stormwater Management Plan and Ordinance 2008-01. Commissioner Tomasello seconded and all voted in favor.

Stafford Township's April 2007 Stormwater Management Plan and Ordinance 2007-108, amending Chapter 130 (Land Use and Development) of the Code of Stafford Township

Commissioner Haas moved the recommendation to the Commission of certification of Stafford Township's April 2007 Stormwater Management Plan and Ordinance 2007-108. Commissioner Ashmun seconded and all voted in favor.

Borough of Wrightstown's October 2006 Stormwater Management Plan and Ordinance 2007-08

Commissioner Ficcaglia moved the recommendation to the Commission of certification of Wrightstown Borough's October 2006 Stormwater Management Plan and Ordinance 2007-08. Commissioner Haas seconded and all voted in favor.

Discussion of February 28, 2008 announcement regarding fire safety project.

Prior to proceeding with the agenda items, Chairperson Wilson spoke about the February 28, 2008 announcement of the forest fire control program and the importance of the joint endeavor by the Forest Fire Service, the Townships of Barnegat and Stafford and the Commission. She commended staff members Paul Leakan and Joel Mott for their efforts and noted the excellent publicity that had been generated. She said that it was made very clear during the presentation that fire is part of the Pinelands ecology and that property owners in such a fire prone area must learn to retrofit/maintain their properties to prevent the spread of fire.

In response to a question by Commissioner Ashmun regarding staff resources to participate in this program, Mr. Stokes said that Mr. David Kutner had prepared a project plan and that staff were anxious to proceed quickly in identifying both the high hazard fire-prone areas and the means to address the issue. The GIS office would be providing support. Commissioner Ashmun added that it was one of the items that the Personnel and Budget Committee would have to look at closely.

Commissioner Lee said that the Commission needed to take steps to allow fire management to occur. He recalled a bus tour that the Committee had taken through the Atlantic County growth towns (*March 22, 2002*) and how dismayed he had been that fingers of uncleared land had been permitted within recently approved communities, creating a fire hazard. He noted that timber has a value and that the sale of wood could help offset the cost of clearing trees from fire-prone areas.

Commissioner Ficcaglia said that there had to be a balance between the beneficial aspects of trees as shade, habitat, buffers, etc. and their hazard as fuel.

Mr. Stokes said that Ed Wengrowski had conducted another of his information presentations on maintaining septic systems at the Southampton Township Municipal Building the previous evening. Some twenty local residents were in attendance. From the audience, Ms. Nan Walnut thanked the Commission for sending him to their community. She said that his presentation had been well received. Mr. Stokes said that Mr. Wengrowski was scheduled to make his presentation at an upcoming meeting of the Pinelands Municipal Council.

3. Continued discussion of proposed CMP amendments related to cluster development in the Forest and Rural Development Areas

Mr. Stokes distributed a document entitled *Potential Clustering Principles - February 29, 2008 (Attachment A; Mr. Stokes discussed all 16 items and the numbers that appear in the following discussion reference the numbers in the document)*. He said that the document provided a list of principles to serve as a guide in developing a clustering program in the Forest and Rural Development Areas. He said that, at the next meeting, perhaps the Committee could be ready to recommend the principles as warranted and then take action to endorse them. Staff would then draft a rule proposal. He said that, based on what he had heard thus far, there is support for clustering but concern regarding the particulars. He said that if everyone is looking for a “perfect” program, then it is unlikely that a clustering program can be developed. He said that in the interest of recognizing a difference of opinion, perhaps the Committee could find a common ground.

Mr. Stokes reviewed the document and said that a clustering program should not just provide an opportunity, but should be *obligatory* (#3). It should be mandatory for landowners to cluster development unless there is some ecological disadvantage in doing so (#6). He said that bonuses should be awarded to reflect not only the size of the parcel assemblage, but also the location, with more value placed on the more ecologically sensitive areas. He said that bonus incentives must be enticing enough to encourage developers to assemble properties (#7, 8 & 9).

Mr. Stokes provided an example and said that the average residential density in the FA is 1 du/25 ac. Thus, under a conventional yield plan, 8 lots could be developed on a 200 ac. parcel. He said that perhaps with a bonus, clustered development might permit 10 lots. Including stormwater facilities, roads, tot lot, etc., and the development of those 10 lots

might require ~15 acres, leaving 185 acres of protected lands. But, how is that protected land to be managed?

Mr. Liggett said that of 150,000 acres of privately owned lands in the Forest Area, only several thousand acres are in active agriculture.

Mr. Stokes said that the residents of a clustered development would have a vested interest in seeing how open space is managed and protected (#14) and noted that in the Highlands, there is a concern with greenhouses on prime agricultural lands. He said that although the Commission does not necessarily oppose greenhouses, perhaps an impervious cover limit of 3% should be established for those parcels with an active and continuing agricultural use (#15).

Mr. Stokes noted that Ms. Grogan has drafted forestry rules that have yet to be discussed internally. The CMP encourages landowners to enter into the state forestry stewardship program in order to promote habitat protection. Likewise clustered development is absolutely essential to the long term protection of the Forest Area.

Mr. Stokes concluded his review of the “Principles” and opened the discussion.

Commissioner Lee asked if it were the Pinelands Protection Act (Act) that was driving the need to propose a clustering program, and if so, maybe a thorough reading of the Act would help the Committee come to an agreement.

Mr. Stokes said ultimately, yes. the Commission had dealt with the goals of the Act by designating management areas within the Protection Area. In order to protect the essential character of the Pinelands, 80% of the development that has occurred has been within the RGA. However, in the Forest Area, there is large lot and “scattered and piecemeal” development that must be addressed. He said that once the ecological integrity assessment (EIA) is complete, the Commission’s goal is to refine the management areas. As a transitional area, the Rural Development Area is likely to be subject to some potential changes.

Commissioner Ashmun said that there were four areas to be expanded upon:

1. If clustering is to be mandatory, it is important that the planning be done at the local level through the master plan and ordinances in order to prevent *ad hoc* development
2. the bonus density should be for the assembly of a larger tract but it must be clarified as to what size/how, etc.
3. in permitting the 50% expansion of existing agriculture, what conditions would be imposed, e.g., what about the clearing of 25 acres of trees?
4. who provides the final approval on deed restrictions and farmland management plans?

Mr. Stokes said that he felt that the clustering regulations should include a sample easement, such as the one prepared by Ms. Roth, as an appendix. The Commission

would need to agree that a general easement could be provided and then tailored as necessary according to the circumstances of a particular application; it would need to reflect the conditions of the farmland conservation plan.. The Commission's permitting office would review the farmland management plan.

Ms Roth said that there was a precedent for easements though the NJ DEP freshwater wetlands regulations.

Commissioner Ficcaglia said that she was concerned about forest management. She said that on her own property, her goal was to maintain habitat while that of her forester was to cut down trees. Also, she had a concern about trails through the forest as, just like mining operations, the presence of trails and roads encourages ATVs and the killing of snakes.

Mr. Stokes said that the protected lands could be owned by the homeowners and they might want to put in some walking trails and that would be addressed through the permitting process.

Commissioner Ficcaglia said, in that case, an environmental impact statement should be provided prior to the development of any trails.

Commissioner Haas said that he supported clustering but he wondered how the municipalities would react.

Mr. Stokes said that the response would vary and some would not be happy; the Commission should prepare itself for criticism. But, he noted that earlier in the meeting they had discussed fire safety. He noted that in Barnegat Township there is an area zoned for 15 or 20 acre lots which permits nice homes to be scattered through the forest. Those homes are at risk and subject to fire. If you were to ask the municipality, they would prefer smaller lots.

In response to Commissioner Galletta's question about item #6 (clustering shall not be permitted if it can't meet the environmental standards of the CMP....), Mr. Stokes said that, although it would probably be the exception rather than the rule, that would apply to large wet properties where there was no place to locate homes while protecting wetlands. He said that a basic tenet of clustering is that the water quality standards must be applied to the overall piece of property. In the FA, there is virtually no chance of not meeting the 2 ppm standards on a 20 acre lot but, when the lots are smaller and the wells close together, this could become a significant issue.

In response to Commissioner Galletta's question concerning #8 as to who determines the value of an "ecologically valuable" property, Mr. Stokes said that, for it to work, a clustering program needs to be clear and easy to administer. There are specific formulas in the CMP. Generally areas zoned for 5-acre lots are closer to developed areas; the 70-acre zone is more environmentally sensitive.

Referencing #12, Commissioner Galletta said that he opposed any active recreation in the Forest Area even as part of cluster developments as, from the experience in his community, playgrounds are a nuisance and are not cared for by the homeowners associations.

Mr. Stokes responded that that active recreation would be permissive, not mandatory. and Ms. Grogan added that for the smaller clustered communities, the project and the municipality might prefer a contribution to a municipal recreation fund in lieu of constructing recreational facilities on site.

Mr. Stokes said that the easement on the protected property will control its future use and development. He said that he believed that the best stewards of the property are those who will live there.

Commissioner Galletta said that if the open space can be used as part of the municipal recreation and open space inventory, the municipalities might find clustering more appealing.

Commissioner Kennedy said that homeowners associations are generally ill equipped to monitor and care for these deed restricted lands. He suggested that, for agricultural lands, an established agency, such as the County, own the easement.

Mr. Stokes, referencing #13 said that there will be covenants as to how the open space will be managed no matter who owns it. If the Committee endorses the principle, it will allow ownership in a variety of hands but subject to the protection goals.

Referencing #10, Commissioner Kennedy said that in locating the cluster various interests must be addressed, including the right to farm. He cautioned against relying upon a farmland conservation plan (#15) in developing an easement for farmland as such plans are not intended to be regulatory documents, rather they are based upon whatever activity the farmer is doing currently and do not preclude a different agricultural activity in the future. During the ensuing discussion, Mr. Stokes asked Commissioner Kennedy to please provide him with some materials and references that might provide clarification in preparing easements.

In discussing easements and various concerns such as a farmer in a cluster development initiating a swine operation, Ms. Grogan said that there are a number of municipalities that already have regulations in place and that it has not become an issue in the residential districts within the Forest Area. Mr. Stokes said that the Committee should be careful not to allow the exception to drive the rule. The municipalities will work through the unusual situations.

4. Public Comment

Mr. Fred Akers, Executive Director of the Great Egg Harbor Watershed Association, discussed the need to limit impervious coverage to protect water quality. He said that

with cluster development could come a bigger localized pollutant load and noted that in the RDA a cluster development might mean 60-70 houses vs. a handful in FA. The municipalities may object. Also, based on his own experience as a landowner, he cautioned against allowing developers to use lands already recognized as critical habitat as the set-aside for clustered development. Referencing a concern expressed by Commissioner Ficcaglia, Mr. Akers said that ATV trails already exist in forested lands.

Mr. Carleton Montgomery, Executive Director of the Pinelands Preservation Alliance, said that homeowners associations may be ill equipped to manage open space, open-land owners may not be good stewards of the land and only farmers will have an interest in protecting the lands. Municipalities may not see clustered development as a means of protecting forest but as a means of promoting development and have objections on that basis. The Commission should not assume that the residents and municipal officials have an understanding of clustering. He said that he didn't believe there should be any bonus densities unless there is an aggregation of land.

Mr. Peter Ferwerda, Warren Grove resident, said that he was disturbed by the concept of clustering and he saw it as a mechanism to fragment the forest.

Mr. Harry Monesson, Pemberton Township resident, said that he felt that farmers are the best stewards of the land.

Mr. Stokes asked that the P&I Committee agree to the clustering program principles prior to staff proceeding with developing rules.

Commissioner Lee said that he wanted to be clear as to the Commission's discretion and authority and to understand the relationship between the Pinelands Protection Act, the CMP and the Municipal Land Use Law (MLUL) and wanted to discuss this further with respect to the clustering proposal.

Mr. Stokes responded that the Commission could structure a clustering program as it sees fit. Under the Pinelands Protection Act, the Commission can create and implement programs that are not otherwise expressed in or consistent with the MLUL. To the extent that nothing is said in the affirmative regarding the MLUL, the MLUL prevails. Mr. Stokes said that staff would provide a legal basis.

5. Other Items of Interest

Chairperson Wilson said that the Personnel and Budget Committee and the Commission as a whole would be developing a strategy for dealing with the governor's budget proposal and the impact on the Commission.

The meeting adjourned at 11:50 a.m.

/CS15A

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SUMMARY

The Committee adopted the minutes from the January 25, 2008 meeting.

The Committee discussed the February 28 press conference announcing the wildfire safety initiative being undertaken jointly with the NJ Forest Fire Service in Barnegat and Stafford Townships.

The Committee recommended Commission certification of stormwater management plans and ordinances (response to 2006 CMP amendments) submitted by the following Municipalities:

Dennis and Stafford Townships
Folsom and Wrightstown Boroughs

The Committee reviewed potential clustering principles for the Forest and Rural Development Areas. The Committee asked for additional information including that related to the Pinelands Protection Act, land stewardship, deed restrictions, and the relevance of a farmland conservation plan as an appropriate mechanism for limiting the expansion of existing agriculture activities in association with clustered development.